

NEWS FROM THE FIRM

Orsingher Ortu - Avvocati Associati advised Douglas on the acquisition of Limoni-La Gardenia

A team led by **Domenico Colella** and co-headed by **Manfredi Leanza** and **Stephen McCleery** (consisting of **Simone Masotto**, **Cesare De Falco**, **Elisa Cappellini**, **Anna Chiara Margottini**, **Valentina Mauri**, **Francesco Senesi** and **Dora Vuolo**) assisted Douglas (a CVC portfolio company) on the acquisition of Limoni and La Gardenia (owning more than 500 perfumeries in Italy) from LLG-Leading Luxury Group.

Advising Antares Vision on a corporate and financial reorganisation of the Group

A team led by partner **Manfredi Leanza** assisted Antares Vision's shareholders on the buyback from Fondo Italiano di Investimento of 21,11% of the company. The transaction has been financed with two long-term loan facilities made available by a pool of banks.

Awards

At the IP/TMT Legal Community Award gala dinner held on 11 May, **Matteo Orsingher** received the **Lawyer of the year** award for the IP/TMT sector in Italy and the firm was awarded **best firm in Italy for design**.

Upcoming events

On 15 June 2017 in Milan, the firm will host a seminar on **European Automation Mixer** in partnership with IRPAAI (the Institute for Robotic Process Automation and Artificial Intelligence) and The Outsourcing Institute.

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COPYRIGHT and DESIGN

Italian Supreme Court on copyright protection of mass-produced items

On 23 March 2017, the Italian Supreme Court (judgment No. 7477/2017) upheld an appeal by Thun against a judgment of the Court of Appeal of Venice, which had found that Thun's porcelain statues were not eligible for copyright protection as they lacked "artistic value" (on the basis of their mass-produced and mass-market nature). The Supreme Court clarified that the element of artistic value required for industrial design protection is not necessarily excluded on the basis that the relevant product is mass-produced.

CJEU on sale of multimedia players

On 26 April 2017, the EU Court of Justice (CJEU) issued its judgment in **Case C-527/15** (Stichting Brein v. Jack Frederik Wullems), in which it held that the sale of multimedia players on which there are pre-installed add-ons, available on the internet, containing hyperlinks to websites on which copyright-protected works have been made available to the public without the consent of the right holders is an act of "communication to the public" within the meaning of article 3 of Directive (EC) No. 2001/29 of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

FINANCE

NPLs: the European Central Bank publishes "Guidance to banks on non-performing loans"

On 20 March 2017, the European Central Bank (the "ECB") published its **"Guidance to banks on non-performing loans"** (the "Guidance"). The Guidance has the purpose of clarifying supervisory expectations as regards the identification, management, measurement and write-offs of NPLs in sectors that are not specifically regulated by European regulations and directives or national regulations. The Guidance is addressed to credit institutions but is generally applicable to all significant institutions (SIs) supervised directly under the Single Supervisory Mechanism (SSM), including their international subsidiaries. While the Guidance is non-binding, the ECB expects complete cooperation and adherence to its content by the banks concerned; in addition, certain undertakings may be made binding on an individual basis, in the context of the Supervisory Review and Evaluation Process (SREP).

TRADEMARKS

The CJEU denies trademark protection to a sweet's packaging due to lack of distinctiveness

On 4 May 2017, the EU Court of Justice (CJEU) issued its judgment in **Case C-417/16 P** (August Storck KG v European Union Intellectual Property Office) confirming a previous decision of the General Court (10 May 2016, **Case T-806/14**), which (confirming in turn a ruling by EUIPO) refused EU trademark protection to a figurative mark, designating confectionery, chocolate and similar products, representing a white and blue square-shaped packaging, reproduced below.



The CJEU reiterated (as per its previous case law) that in assessing the distinctive character of a trademark consisting of the appearance of the relevant product (also when it includes specific graphic elements), it is necessary to verify whether the trademark departs significantly from the standard or customs of the sector. This condition was considered not to be met in this specific case.

CAPITAL MARKETS

Incentives for SMEs and Equity Crowdfunding

On 24 April 2017, Law Decree No. 50/2017 (the "Law Decree") was published in the **Italian Official Journal**. The Law Decree extends the benefit of certain capital raising and incentive rules, previously applicable only to innovative start-ups, to all SMEs incorporated as limited liability companies (companies employing less than 250 individuals and with annual turnover of not more than Euro 50 million or companies whose annual financial statement is not more than Euro 43 million). The relevant amendments to articles 2, 5 and 6 of **Law Decree No. 179/2012** mean that SMEs which are incorporated as limited liability companies may, inter alia, (i) create different classes of quotas with rights specific to those quotas; (ii) make a public offering of quotas by way of equity crowdfunding; (iii) Carry out transactions involving their quotas, when such transactions are aimed at executing incentive plans concerning the transfer of quotas to employees or directors.

DATA PROTECTION

Italian Data Protection Authority publishes guidelines on GDPR

On 28 April 2017, the Italian Data Protection Authority ("DPA") published its guidelines (the "Guidelines") for the implementation of the **General Data Protection Regulation** (the "GDPR"). In particular, the Guidelines highlight the changes that will occur once the GDPR comes into force on 25 May 2018 as compared to the provisions of the existing Italian Privacy Code (Legislative Decree No. 196/2003). The full Guidelines are available [here](#).

LABOUR

Dismissal decided by the employer before analysing the employee's justifications considered legitimate

On 29 March 2017, the Italian Supreme Court issued its judgment No. 8136/2017 in the case of an employee who became aware of his employer's clear and definitive intention to dismiss him due for disciplinary reasons before the disciplinary procedure was concluded. According to article 7 of Law No. 300/1970, an employee has 5 days to justify his/her position after receiving the relevant disciplinary letter. Once the employee's justifications have been considered, the employer may decide whether or not to dismiss him/her. In this specific case, the Board of Directors of the employer took a decision to dismiss the employee before having received his justification. However, the Supreme Court held that the timing of the definitive decision to dismiss an employee is irrelevant (and the dismissal is still lawful) if it is made in accordance with the other applicable legal provisions.

PATENT

EPO changes its practice regarding patent applications lacking unity

As from 1 April 2017, the European Patent Office (the "EPO") has adopted a new examination procedure for patent applications lacking unity (i.e. claiming a plurality of inventions). Previously, if a lack of unity was found at the search stage, applicants were provided with a partial search report and an invitation to pay additional search fees to have the other inventions identified by the EPO. An opinion on patentability was issued only at a later stage, after the additional searches were carried out by the EPO. Under the new regime, the EPO will - in addition to the preliminary search report and the invitation to pay for an additional search - also provide a preliminary opinion on patentability of the first invention mentioned in the claims. Please see [here](#) for further information.

INDUSTRIES

E-COMMERCE

European Parliament's vote on geo-blocking legislation

On 25 April 2017 the European Parliament's Committee on Internal Market and Consumer Protection (IMCO) approved the **amended draft legislation** to ban unjustified geo-blocking in business-to-consumer relationships. IMCO's approval represents the third stage in the process of regulating geo-blocking after the presentation by the EU Commission to the EU Parliament of a **draft regulation on 25 May 2016** and after its **review by the EU Council**. The draft regulation approved by the EU Parliament indicates specific scenarios in which geo-blocking will be prohibited: online sellers may not discriminate against consumers with regard to general terms and conditions, including prices, on the basis of their nationality, place of residence or even temporary location. It is worth noting that certain sectors, such as audiovisual services (including broadcasts of sports events provided on the basis of exclusive territorial licences), financial, transport, electronic communication or healthcare services are still excluded from the scope of the draft regulation.

Italian court over Uber ban

On 29 May 2017, the Court of Rome has revoked the **interlocutory injunction issue on 7 April** ordering Uber to cease providing its various mobile applications on Italian territory.

FOOD

Compulsory indication of the origin of milk came into force

On 20 April 2017, the **Ministerial Decree of 9 December 2016** the compulsory indication of the origin of milk and milk-based products came into force. Given the huge volume of milk imported into Italy, this new rule aims at enabling consumers to distinguish milk or milk-based products originating in Italy from products originating abroad. In particular, a product may only display the indication "origin of milk: Italy" if the milk is from cows located in Italy and is processed in Italy.

MEDIA

WhatsApp fined by Italian consumer authority

On 11 May 2017, the Italian consumer authority (the "ICA") closed 2 investigations opened in October 2016 concerning alleged infringements of the Consumer Code by WhatsApp. In the first investigation the ICA found that WhatsApp forced users of WhatsApp Messenger to accept a new provision of the Terms of Use granting WhatsApp the right to share users' personal data with Facebook. In the second investigation, the ICA concluded that certain contractual clauses in WhatsApp's Terms of Use (including limitations of liability, unilateral right to terminate the agreement and/or interrupt the service, the choice of the law of the State of California) were unfair. The ICA has levied a fine on WhatsApp Inc. of 3 million euro. For more information see [here](#).

TECHNOLOGY

Amendments to guidelines on sales of Serie A rights requested

On 23 March 2017, the EU Commission launched a public consultation on consumer financial services with special focus on so-called "FinTech" services (i.e. technologies facilitating the access to financial services and/or improving the efficiency of financial investments). In particular, the EU Commission wants to assess how the banking sector may exploit the opportunities offered by **Regulation (EU) No. 910/2014** of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust service (the "eIDAS Regulation"), which allows consumers to be recognised electronically through their e-signature. In addition, the EU Commission invited financial businesses to propose measures aimed at improving the use of financial products by consumers in the on-line environment. The cut-off date for submissions is 15 June 2017. For further information please [click here](#).

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